



General Assembly

January Session, 2015

Raised Bill No. 6895

LCO No. 3911



Referred to Committee on AGING

Introduced by:
(AGE)

AN ACT REQUIRING THE STATE OMBUDSMAN TO INVESTIGATE COMPLAINTS CONCERNING RECIPIENTS OF HOME AND COMMUNITY-BASED CARE.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 17a-405 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2015*):

3 (a) As used in this chapter:

4 (1) "State agency" means the Department on Aging.

5 (2) "Office" means the Office of the Long-Term Care Ombudsman
6 established in this section.

7 (3) "State Ombudsman" means the State Ombudsman established in
8 this section.

9 (4) "Assistant State Ombudsman" means the person appointed by
10 the State Ombudsman to assist the State Ombudsman in carrying out
11 the duties of the State Ombudsman pursuant to section 17a-408, as

12 amended by this act.

13 [(4)] (5) "Program" means the long-term care ombudsman program
14 administered by the Office of the Long-Term Care Ombudsman
15 established in this section.

16 [(5)] (6) "Representative" includes the Assistant State Ombudsman, a
17 regional ombudsman, a residents' advocate or an employee of the
18 Office of the Long-Term Care Ombudsman who is individually
19 designated by the State Ombudsman.

20 [(6)] (7) "Resident" means an [older] individual who resides in or is a
21 patient in a long-term care facility who is sixty years of age or older.

22 [(7)] (8) "Long-term care facility" means any skilled nursing facility,
23 as defined in Section 1819(a) of the Social Security Act [] (42 USC
24 1395i-3(a)); any nursing facility, as defined in Section 1919(a) of the
25 Social Security Act [] (42 USC 1396r(a)); a board and care facility as
26 defined in Section 102(19) of the federal Older Americans Act [] (42
27 USC 3002(19)); and for purposes of ombudsman program coverage, an
28 institution regulated by the state pursuant to Section 1616(e) of the
29 Social Security Act [] (42 USC 1382e(e)) and any other adult care home
30 similar to a facility or nursing facility or board and care home.

31 [(8)] (9) "Commissioner" means the Commissioner on Aging.

32 [(9)] (10) "Applicant" means an [older] individual who has applied
33 for admission to a long-term care facility or for home and community-
34 based services.

35 (11) "Home and community-based services" means long-term care
36 provided in a home or community setting, or both, to a recipient who
37 is sixty years of age or older.

38 (b) There is established an independent Office of the Long-Term
39 Care Ombudsman within the Department on Aging. The
40 Commissioner on Aging shall appoint a State Ombudsman who shall

41 be selected from among individuals with expertise and experience in
42 the fields of long-term care and advocacy to head the office and the
43 State Ombudsman shall appoint [assistant] an Assistant State
44 Ombudsman and regional ombudsmen. In the event the State
45 Ombudsman [or an assistant regional ombudsman] is unable to fulfill
46 the duties of the office, the commissioner shall appoint an acting State
47 Ombudsman. [and] In the event the Assistant State Ombudsman or a
48 regional ombudsman is unable to fulfill the duties of the office, the
49 State Ombudsman shall appoint an acting [assistant] Assistant State
50 Ombudsman or an acting regional ombudsman, as the case may be.

51 (c) Notwithstanding the provisions of subsection (b) of this section,
52 on and after July 1, 1990, the positions of State Ombudsman, Assistant
53 State Ombudsman and regional ombudsmen shall be classified service
54 positions. The State Ombudsman and regional ombudsmen holding
55 said positions on said date shall continue to serve in their positions as
56 if selected through classified service procedures. As vacancies occur in
57 such positions thereafter, such vacancies shall be filled in accordance
58 with classified service procedures.

59 Sec. 2. Subsection (a) of section 17a-406 of the general statutes is
60 repealed and the following is substituted in lieu thereof (*Effective July*
61 *1, 2015*):

62 (a) Residents' advocates shall be appointed by the State
63 Ombudsman, in consultation with the regional ombudsmen, for each
64 region in sufficient number to serve the long-term care facilities and
65 recipients of home and community-based services within such region.
66 Such residents' advocates shall, if possible, be residents of the region in
67 which they will serve, and shall have demonstrated an interest in the
68 care of the elderly. Residents' advocates shall serve without
69 compensation but may be reimbursed for reasonable expenses
70 incurred in the performance of their duties, within available
71 appropriations.

72 Sec. 3. Section 17a-408 of the general statutes is repealed and the
73 following is substituted in lieu thereof (*Effective July 1, 2015*):

74 (a) The State Ombudsman shall establish and operate ombudsman
75 programs in this state pursuant to Sections 711 to 713, inclusive, of the
76 federal Older Americans Act of 1965, as amended from time to time.

77 (b) The State Ombudsman shall serve on a full-time basis, and shall
78 personally or through representatives of the office:

79 (1) Identify, investigate and resolve complaints that:

80 (A) Are made by, or on behalf of, residents of long-term care
81 facilities and recipients of home and community-based services or, as
82 to complaints involving the application for admission to a long-term
83 care facility or for home and community-based services, by or on
84 behalf of applicants; and

85 (B) Relate to action, inaction or decisions that may adversely affect
86 the health, safety, welfare or rights of the residents of long-term care
87 facilities and recipients of home and community-based services,
88 including the welfare and rights of the residents and recipients with
89 respect to the appointment and activities of guardians and
90 representative payees, of (i) providers or representatives of providers
91 of long-term care services, (ii) public agencies, or (iii) health and social
92 service agencies;

93 (2) Provide services to protect the health, safety, welfare and rights
94 of the residents of long-term care facilities and recipients of home and
95 community-based services;

96 (3) Inform the residents of long-term care facilities and recipients of
97 home and community-based services about means of obtaining
98 services provided by providers or agencies described in subparagraph
99 (B) of subdivision (1) of this subsection or services described in
100 subdivision (2) of this subsection;

101 (4) Ensure that the residents of long-term care facilities and
102 recipients of home and community-based services and, as to issues
103 involving applications for admission to long-term care facilities or for
104 home and community-based services, applicants have regular and
105 timely access to the services provided through the office and that the
106 residents, recipients and complainants receive timely responses from
107 representatives of the office to complaints;

108 (5) Represent the interests of the residents of long-term care facilities
109 and recipients of home and community-based services, and of
110 applicants in relation to issues concerning applications to long-term
111 care facilities and for home and community-based services, before
112 governmental agencies and seek administrative, legal and other
113 remedies to protect the health, safety, welfare and rights of the
114 residents of long-term care facilities and recipients of home and
115 community-based services;

116 (6) Provide administrative and technical assistance to
117 representatives and training in areas including, but not limited to,
118 Alzheimer's disease and dementia symptoms and care;

119 (7) (A) Analyze, comment on and monitor the development and
120 implementation of federal, state and local laws, regulations, and other
121 governmental policies and actions that pertain to the health, safety,
122 welfare and rights of the residents of long-term care facilities and
123 recipients of home and community-based services with respect to the
124 adequacy of long-term care facilities and home and community-based
125 services in this state and to the rights of applicants in relation to
126 applications to long-term care facilities or for home and community-
127 based services;

128 (B) Recommend any changes in such laws, regulations, policies and
129 actions as the office determines to be appropriate; and

130 (C) Facilitate public comment on such laws, regulations, policies
131 and actions;

132 (8) Advocate for:

133 (A) Any changes in federal, state and local laws, regulations and
134 other governmental policies and actions that pertain to the health,
135 safety, welfare and rights of residents of long-term care facilities and
136 recipients of home and community-based services with respect to the
137 adequacy of long-term care facilities and services in this state and to
138 the health, safety, welfare and rights of applicants [which] that the
139 State Ombudsman determines to be appropriate;

140 (B) Appropriate action by groups or agencies with jurisdictional
141 authority to deal with problems affecting individual residents, [and the
142 general resident population and applicants] the general resident
143 population of and applicants to long-term care facilities and recipients
144 of home and community-based services in relation to issues
145 concerning applications to long-term care facilities and for home and
146 community-based services; and

147 (C) The enactment of legislative recommendations by the General
148 Assembly and of regulatory recommendations by commissioners of
149 Connecticut state agencies;

150 (9) (A) Provide for training representatives of the office;

151 (B) Promote the development of citizen organizations to participate
152 in the program; and

153 (C) Provide technical support for the development of resident and
154 family councils to protect the well-being and rights of residents of
155 long-term care facilities and recipients of home and community-based
156 services;

157 (10) Coordinate ombudsman services with the protection and
158 advocacy systems for individuals with developmental disabilities and
159 mental illnesses established under (A) Part A of the Development
160 Disabilities Assistance and Bill of Rights Act (42 USC 6001, et seq.), and

161 (B) The Protection and Advocacy for Mentally Ill Individuals Act of
162 1986 (42 USC 10801 et seq.);

163 (11) Coordinate, to the greatest extent possible, ombudsman services
164 with legal assistance provided under Section 306(a)(2)(C) of the federal
165 Older Americans Act of 1965 [L] (42 USC 3026(a)(2)(C)),_z as amended
166 from time to time, through the adoption of memoranda of
167 understanding and other means;

168 (12) Create, and periodically update as needed, a training manual
169 for nursing home facilities identified in section 19a-522c that provides
170 guidance on structuring and implementing the training required by
171 said section;

172 (13) Provide services described in this subsection [L] to residents
173 under age sixty living in a long-term care facility, if (A) a majority of
174 the residents of the facility where the younger person resides are over
175 age sixty and (B) such services do not weaken or decrease service to
176 older individuals covered under this chapter;

177 (14) [Implement and administer, on and after July 1, 2014, a pilot
178 program that serves home and community-based care recipients in
179 Hartford County] Provide services described in this subsection to
180 recipients of home and community-based services; and

181 (15) Carry out such other activities and duties as may be required
182 under federal law.

183 Sec. 4. Section 17a-409 of the general statutes is repealed and the
184 following is substituted in lieu thereof (*Effective July 1, 2015*):

185 The State Ombudsman is authorized to investigate and make
186 reports and recommendations concerning any act or the failure to act
187 by any agency, official or public employee, with respect to [their] his or
188 her responsibilities and duties in connection with long-term care
189 facilities or home and community-based services, except the courts and

190 [their] court personnel, legislative bodies and [their] personnel and the
191 chief executive of the state and the chief executive's personal staff and
192 all elected officials.

193 Sec. 5. Section 17a-410 of the general statutes is repealed and the
194 following is substituted in lieu thereof (*Effective July 1, 2015*):

195 The regional ombudsmen shall, in accordance with the policies and
196 procedures established by the Office of the Long-Term Care
197 Ombudsman:

198 (1) Provide services to protect the health, safety, welfare and rights
199 of residents of long-term care facilities and recipients of home and
200 community-based services;

201 (2) Ensure that residents of long-term care facilities and recipients of
202 home and community-based services in service areas have regular
203 timely access to representatives of the program and timely responses
204 to complaints and requests for assistance;

205 (3) Identify, investigate and resolve complaints made by or on
206 behalf of residents of long-term care facilities and recipients of home
207 and community-based services that relate to action, inaction or
208 decisions that may adversely affect the health, safety, welfare or rights
209 of the residents or recipients or by, or on behalf of, applicants in
210 relation to issues concerning applications to long-term care facilities or
211 for home and community-based services;

212 (4) Represent the interests of residents of long-term care facilities
213 and recipients of home and community-based services and applicants
214 [] to long-term care facilities or for home and community-based
215 services [in relation to their applications to long-term care facilities,]
216 before government agencies and seek administrative, legal and other
217 remedies to protect the health, safety, welfare and rights of the
218 residents;

219 (5) (A) Review and, if necessary, comment on any existing and
220 proposed laws, regulations and other government policies and actions
221 that pertain to the rights and well-being of residents of long-term care
222 facilities and recipients of home and community-based services and
223 applicants in relation to their applications to long-term care facilities,
224 or for home and community-based services, and (B) facilitate the
225 ability of the public to comment on the laws, regulations, policies and
226 actions;

227 (6) Support the development of resident and family councils; and

228 (7) Carry out other activities that the State Ombudsman determines
229 to be appropriate.

230 Sec. 6. Section 17a-414 of the general statutes is repealed and the
231 following is substituted in lieu thereof (*Effective July 1, 2015*):

232 (a) The state agency shall ensure that:

233 (1) Adequate legal counsel is available and is able, without conflict
234 of interest, to: (A) Provide advice and consultation needed to protect
235 the health, safety, welfare and rights of residents of long-term care
236 facilities, recipients of home and community-based services and
237 applicants in relation to their applications to long-term care facilities or
238 for home and community-based services; and (B) assist the
239 [ombudsman] State Ombudsman and representatives of the office in
240 the performance of the official duties of the ombudsman and
241 representatives; and

242 (2) Administrative, legal and other appropriate remedies are
243 pursued on behalf of residents of long-term care facilities, recipients of
244 home and community-based services and applicants in relation to their
245 applications to long-term care facilities or for home and community-
246 based services.

247 (b) The Assistant State Ombudsman, regional ombudsmen and

248 residents' advocates shall be considered state employees under section
249 4-141 for the purposes of any civil action for damages on account of
250 any act or omission that is not wanton, wilful or malicious and that is
251 within the scope of employment or duties under sections 17a-405 to
252 17a-417, inclusive, as amended by this act, 19a-531 and 19a-532.

253 Sec. 7. Section 17a-415 of the general statutes is repealed and the
254 following is substituted in lieu thereof (*Effective July 1, 2015*):

255 (a) The [ombudsman] State Ombudsman and representatives of the
256 office shall have:

257 (1) Access to long-term care facilities and residents;

258 (2) Appropriate access to review the medical and social records of a
259 resident of a long-term care facility or recipient of home and
260 community-based services, if (A) the representative has the permission
261 of the resident or recipient, or the legal representative of the resident or
262 recipient, (B) the resident or recipient is unable to consent to the review
263 and has no legal representative, or (C) access to the records is
264 necessary to investigate a complaint and a legal guardian of the
265 resident or recipient refuses to give permission, a representative of the
266 office has reasonable cause to believe that the guardian is not acting in
267 the best interests of the resident or recipient, and the representative
268 obtains the approval of the [ombudsman] State Ombudsman;

269 (3) Access to the administrative records, policies and documents, to
270 which the residents have, or the general public has access, of long-term
271 care facilities; and

272 (4) Access to and, on request, copies of all licensing and certification
273 records maintained by the state with respect to long-term care facilities
274 and providers of home and community-based services.

275 (b) Any person or entity who wilfully interferes with
276 representatives of the office in the performance of the official duties of

277 the representatives, or any long-term care facility or other entity which
278 retaliates or exacts reprisals with respect to any resident, recipient of
279 services, employee or other person for filing a complaint with,
280 providing information to, or otherwise cooperating with any
281 representative of the office, or long-term care facility which refuses to
282 permit the State Ombudsman or any regional ombudsman or any
283 residents' advocate entry into such facility or any such facility or
284 provider that refuses to cooperate with the State Ombudsman, or any
285 regional ombudsman or any residents' advocate in the carrying out of
286 [their] his or her mandated duties and responsibilities enumerated
287 under sections 17a-405 to 17a-417, inclusive, as amended by this act,
288 19a-531 and 19a-532 or refuses to permit residents, recipients of
289 services or staff to communicate freely with the State Ombudsman or
290 any regional ombudsman or any residents' advocate shall be subject to
291 the penalty prescribed for a class B violation under section 19a-527.

292 (c) In carrying out the duties enumerated in sections 17a-405 to 17a-
293 417, inclusive, as amended by this act, 19a-531 and 19a-532, the State
294 Ombudsman, the Assistant State Ombudsman, the regional
295 ombudsmen and the residents' advocates shall have access to all
296 relevant public records, except [that] records [which] that are
297 confidential to a resident of a long-term care facility or recipient of
298 home and community-based services shall only be divulged with the
299 written consent of the resident or recipient.

300 (d) In the performance of the duties and responsibilities enumerated
301 under sections 17a-405 to 17a-417, inclusive, as amended by this act,
302 19a-531 and 19a-532, the State Ombudsman, the Assistant State
303 Ombudsman, the regional ombudsmen and the residents' advocates
304 may utilize any other state department, agency or commission, or any
305 other public or private agencies, groups or individuals who are
306 appropriate and who may be available.

307 Sec. 8. Section 17a-417 of the general statutes is repealed and the
308 following is substituted in lieu thereof (*Effective July 1, 2015*):

309 The Commissioner on Aging shall require the State Ombudsman to:

310 (1) Prepare an annual report:

311 (A) Describing the activities carried out by the office in the year for
312 which the report is prepared;

313 (B) Containing and analyzing the data collected under section 17a-
314 418, as amended by this act;

315 (C) Evaluating the problems experienced by and the complaints
316 made by or on behalf of residents of long-term care facilities or
317 recipients of home and community-based services;

318 (D) Containing recommendations for (i) improving the quality of
319 the care and life of the residents of long-term care facilities or
320 recipients of home and community-based services, and (ii) protecting
321 the health, safety, welfare and rights of the residents and recipients;

322 (E) (i) Analyzing the success of the program including success in
323 providing services to residents of long-term care facilities and
324 recipients of home and community-based services; and (ii) identifying
325 barriers that prevent the optimal operation of the program; and

326 (F) Providing policy, regulatory and legislative recommendations to
327 solve identified problems, to resolve the complaints, to improve the
328 quality of the care and life of residents of long-term care facilities and
329 recipients of home and community-based services, to protect the
330 health, safety, welfare and rights of residents and recipients and to
331 remove the barriers that prevent the optimal operation of the program.

332 (2) Analyze, comment on and monitor the development and
333 implementation of federal, state and local laws, regulations and other
334 government policies and actions that pertain to long-term care facilities
335 and services, and to the health, safety, welfare and rights of residents
336 in the state, and recommend any changes in such laws, regulations and
337 policies as the office determines to be appropriate.

338 (3) (A) Provide such information as the office determines to be
339 necessary to public and private agencies, legislators and other persons,
340 regarding (i) the problems and concerns of older individuals residing
341 in long-term care facilities or who are the recipients of home and
342 community-based services; and (ii) recommendations related to the
343 problems and concerns; and (B) make available to the public and
344 submit to the federal assistant secretary for aging, the Governor, the
345 General Assembly, the Department of Public Health and other
346 appropriate governmental entities, each report prepared under
347 subdivision (1) of this section.

348 Sec. 9. Section 17a-418 of the general statutes is repealed and the
349 following is substituted in lieu thereof (*Effective July 1, 2015*):

350 The state agency shall establish a state-wide uniform system to: (1)
351 Collect and analyze data relating to complaints and conditions in long-
352 term care facilities [and to residents] and complaints concerning home
353 and community-based services for the purpose of identifying and
354 resolving significant problems; and (2) submit the data, on a regular
355 basis to: (A) The Department of Public Health; (B) other state and
356 federal entities that the State Ombudsman determines to be
357 appropriate; and (C) the National Ombudsman Resource Center,
358 established in Section 202(a)(21) of the federal Older Americans Act of
359 1965, as amended from time to time.

360 Sec. 10. Subdivision (2) of section 17a-419 of the general statutes is
361 repealed and the following is substituted in lieu thereof (*Effective July*
362 *1, 2015*):

363 (2) Prohibit the disclosure of the identity of any complainant or
364 resident of a long-term care facility or recipient of home and
365 community-based services with respect to whom the office maintains
366 such files or records unless (A) the complainant, [or] resident or
367 recipient, or the legal representative of the complainant, [or] resident
368 or recipient, consents to the disclosure and the consent is given in

369 writing; or (B) (i) the complainant, [or] resident or recipient gives
 370 consent orally; and (ii) the consent is documented contemporaneously
 371 in a writing made by a representative of the office in accordance with
 372 such requirements as the state agency shall establish; or (iii) the
 373 disclosure is required by court order.

374 Sec. 11. Subdivision (3) of section 17a-421 of the general statutes is
 375 repealed and the following is substituted in lieu thereof (*Effective July*
 376 *1, 2015*):

377 (3) Ensure that the State Ombudsman: (A) Does not have a direct
 378 involvement in the licensing or certification of a long-term care facility
 379 or of a provider of a long-term care service; (B) does not have an
 380 ownership or investment interest, represented by equity, debt or other
 381 financial relationship, in a long-term care facility or a long-term care
 382 service; (C) is not employed by, or participating in the management of,
 383 a long-term care facility or a provider of a home and community-based
 384 service; and (D) does not receive, or have the right to receive, directly
 385 or indirectly, remuneration, in cash or in kind, under a compensation
 386 arrangement with an owner or operator of a long-term care facility or a
 387 provider of a home and community-based service; and

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2015</i>	17a-405
Sec. 2	<i>July 1, 2015</i>	17a-406(a)
Sec. 3	<i>July 1, 2015</i>	17a-408
Sec. 4	<i>July 1, 2015</i>	17a-409
Sec. 5	<i>July 1, 2015</i>	17a-410
Sec. 6	<i>July 1, 2015</i>	17a-414
Sec. 7	<i>July 1, 2015</i>	17a-415
Sec. 8	<i>July 1, 2015</i>	17a-417
Sec. 9	<i>July 1, 2015</i>	17a-418
Sec. 10	<i>July 1, 2015</i>	17a-419(2)
Sec. 11	<i>July 1, 2015</i>	17a-421(3)

Statement of Purpose:

To expand the duties of the Office of the Long-Term Care Ombudsman to home and community-based services and to establish an Assistant Ombudsman position in the office.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]